

MINUTES
SPECIAL MEETING
CITY OF LAWTON PENSION TRUST COMMISSION
CITY HALL 3rd FLOOR CONFERENCE ROOM
MONDAY JULY 22, 2024 9:00 A.M.

Chairman Bayones called the meeting to order at 9:02 A.M. in the third-floor conference room of City Hall.

ROLL CALL

PRESENT: Paul Ellwanger, Christine James, James Apple, Ed Petersen, Teri Bayones

ABSENT: Richard Rogalski (excused)

ALSO PRESENT: Larry Burk, City Manager's Office; Tammy Branstetter, City Clerk's Office; Melissa Whaley, City Attorney's Office; Craig Akard, Human Resources; Taressa Macias, Human Resources; Kristin Huntley, Financial Services; Kaitlin Golden, Financial Services; Perry Warren & Chad Rother, Morgan Stanley

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Notice of meeting and agenda were posted by the City Clerk's Office as required by law.

INTRODUCTION OF GUESTS

None.

III. Consent Agenda

FOR THE BENEFIT OF THE AUDIENCE, ALL MATTERS LISTED UNDER THE CONSENT AGENDA ARE CONSIDERED TO BE ROUTINE BY THE PENSION COMMISSION AND WILL BE ENACTED BY ONE MOTION. THERE WILL BE NO SEPARATE DISCUSSION OF THESE ITEMS. IF DISCUSSION IS DESIRED, THAT ITEM WILL BE REMOVED FROM THE CONSENT AGENDA PRIOR TO ROLL CALL AND WILL BE CONSIDERED SEPARATELY.

- A. Consider a Memo of Information regarding the death of retiree Karolyn Anders.
- B. Consider a Memo of Information regarding the death of retiree Paula Pierce.
- C. Consider a Memo of Information regarding the death of retiree Dickie Huck.
- D. Consider approval for the paid-in-full judgements to be released from the record.

Motion by Apple, Second by Petersen, to approve the consent agenda. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

IV. New Business

- A. Receive quarterly financial report from Morgan Stanley and take action if necessary – Perry Warren, Morgan Stanley.

Perry Warren, Morgan Stanley, presented the quarterly financial report. A copy of the report may

be obtained from the City Clerk's Office upon request.

Ellwanger noted that Warren said he is surprised by the withdraw increasing by 50%. He asked Warren what he meant by that.

Warren said we were prepared for a \$2 million withdraw, but after settlements it ended up being \$2.1 million more than that. He said he didn't know this was in the cards. He said he would appreciate an advance notice if something other than the normal distributions will be coming. Warren said we try our best to be prepared for extra distributions. He said the good news is that the market is up. Warren said he always tries to leave enough cushion, so we don't end up having to sell equity.

No action was taken on this item.

- B. Receive Quarterly Employees Refunds Made from Retirement System and Receive Quarterly Statement of Receipts and Disbursement and take action if necessary – Finance.

Kaitlin Golden, Financial Services, presented the 4th quarter financial report. A copy of the report may be obtained from the City Clerk's Office upon request.

Motion by Ellwanger, **Second** by Apple, to accept the 4th quarter financials as presented. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

- C. Discuss and consider approving a correction of pension benefits to Gerald Ihler, pursuant to Sections 17-3-4-335, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, authorize payment of the corrected monthly amount of \$11,516.42 and retroactive payment of the arrears due to the underpayment, including interest on said arrears, and take other appropriate action as necessary.

Tim Wilson, City Attorney's Office, called John Papahronis, McAfee & Taft, so he could join in on the discussion.

Wilson gave background information on this item.

Gerald Ihler was an employee with the City of Lawton from December 4, 1985 until August 9, 2019. Upon retirement, he selected a 100% joint & survivor normal retirement from the City of Lawton based on Lawton City Code, Section 17-3-4-346, Option 2. City staff, working with the pension trust's outside actuary, is involved in an ongoing review/investigation of pension calculations. Based on an audit of Mr. Ihler's calculations, it was determined that he was not paid in accordance with code. When recalculating Mr. Ihler's benefits, it was determined that his benefit was calculated using an incorrect annual earnings/compensation limit amount, and an incorrect fractional month calculation in determining service. The correction would change Mr. Ihler's monthly benefit to \$11,516.42 and there would be a retroactive arrears payment of approximately \$17,425.80, said number including interest on the arrears as of July 31, 2024, as well as additional interest for each month thereafter until payment is made.

The Pension Trust Commission has the authority under paragraph (C) of Lawton City Code Section 17-3-4-335 to make corrections and adjustments to awarded pension benefits.

Wilson said when Ihler retired originally, he thought he had more years of service than what he actually did – it was either one or two more years of service. Ihler had been told that by a previous HR Director. Some of this is because he worked for the City of Lawton, left and went to

California for a period of time and then came back to work for the City of Lawton and bought back into the retirement system. Wilson said it was somewhat of a unique situation. He said you were allowed to buy back into the retirement system back then. When he bought back in, Ihler was told he would have a certain amount of service for his start date. Wilson said Ihler went through his 30+ year career with the City of Lawton, and when he retired, he had less service years than he had anticipated having. Wilson said Ihler's retirement started with the incorrect amount, and staff caught this mistake about two checks in – he was being paid too much, and his payments were adjusted down. Ihler filed a lawsuit in 2020 against the City of Lawton challenging this determination. Two City Council members and a staff member from the City Attorney's Office met with Ihler in court mediation, and it was worked out that Ihler's equity claim would be settled for \$75,000. Wilson said this was approved by Council. Wilson noted that Ihler's years of service has not changed. Wilson said this was a settlement that was reduced to a friendly suit. He said the pension system bought the judgment, but the pension system will be paid back, with interest, over three years.

Wilson said in going through the investigation of all the calculation issues, there were other issues that were identified with Ihler's that were incorrect. One of these is a \$200,000 salary cap. Wilson said City Code talks about a cap of \$200,000, meaning if you earn more than this amount, it doesn't really matter. However, Wilson said there is also language in City Code right after that that talks about allowing for annual cost of living adjustments that the IRS provides for. Wilson said when Ihler was doing his retirement, he tried to max out his retirement when determining his retirement benefit. When Ihler's benefit was calculated, Wilson said the \$200,000 maximum was used. However, in looking through the investigation of the pension calculations, this was determined to be an error. They should have adjusted above the \$200,000 maximum because \$200,000 is no longer the cap for the IRS.

Wilson said there was also a fractional month error. He said Taressa Macias, HR, can share more information on this topic.

Wilson said at mediation, Garrett Lam, City Attorney's Office, told Ihler there would be some adjustments because of the ongoing investigation. Wilson said adjustments have been made to get Ihler paid what he should be getting paid under City Code, which is based on the calendar year method. Wilson said this will increase Ihler's payment from approximately \$11,200.00 to \$11,516.42 a month. There will also be a retroactive payment of \$17,425.80 – this is the shortage that has occurred since Ihler retired back in 2019.

Ellwanger asked if this sets a precedent for all other participants.

Wilson said no other participant has the \$200,000 cap – Ihler's situation is unique in that regard. He said we are not doing more for Ihler in this correction, we are just correcting to what City Code says he's entitled to. In short, Wilson said this is consistent with the ones we did in March, and he doesn't think this creates a precedent.

Ellwanger asked what the listed rate of 1.0675 represents.

Papahronis said this must be the actuarial rate provided in the plan.

Motion by Petersen, Second by Ellwanger, to approve the correction of pension benefits to Gerald Ihler, and authorize payment of the corrected monthly amount of \$11,516.42 and retroactive payment of the arrears due to the underpayment, including interest on said arrears. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

- D. Consider recommending to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to Administration of the Retirement System, amending Section 17-3-4-354, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, by clarifying compliance with the Internal Revenue Service Employee Plans Compliance Resolution System.

Wilson gave background information on this item. A copy of the proposed ordinance may be obtained from the City Clerk's Office upon request.

The proposed ordinance was a recommendation from outside counsel with expertise in pension related matters. The ordinance clarifies interest or earnings rate calculated for correction of any operational failures shall comply with the provisions of the Internal Revenue Service Employee Plans Compliance Resolution System. This ordinance was presented to the Employee Advisory Committee and will be presented to City Council on July 23, 2024.

Wilson said Papahronis wrote this ordinance at the request of City of Lawton staff. Papahronis cited the exact IRS Code Provision when drafting the ordinance.

Wilson said the EAC recommended approval of this ordinance, and staff is recommending the Pension Trust Commission also recommend approval of the ordinance to the City Council.

Motion by Apple, Second by Ellwanger, to recommend to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to Administration of the Retirement System, amending Section 17-3-4-354, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, by clarifying compliance with the Internal Revenue Service Employee Plans Compliance Resolution System. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

- E. Consider recommending to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to Retirement System for Regular Employees Hired Prior to July 1, 2017, amending Section 17-3-4-336, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, by increasing member and city contributions.

Wilson gave background information on this item. A copy of the proposed ordinance may be obtained from the City Clerk's Office upon request.

This increase is aimed at ensuring the long-term stability of the pension fund. The pension fund is for employees hired prior to July 1, 2017. The increase of member contribution would impact this specific group of employees. The city contribution increase was included in this year's budget. This ordinance was presented to the Employee Advisory Committee and will be presented to City Council on July 23, 2024.

Wilson said this is a code change for contributions to the plan. The last adjustment to contributions occurred in 2010, so it's been 14 years since we've increased contributions. Wilson said the increase would go into effect sometime in September, and the amount that the City of Lawton contributes to retirement system each pay period for retirees that are in the plan would go up from 10% to 11.5%. Wilson said contributions of active members of the legacy plan would go up from 6.3% to 7.8%.

Wilson noted that the City of Lawton contribution for new employees on the DC plan will remain the same.

Wilson said the EAC recommended approval of this ordinance, and staff is recommending the Pension Trust Commission also recommend approval of the ordinance to the City Council.

Motion by Apple, Second by James, to recommend to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to Retirement System for Regular Employees Hired Prior to July 1, 2017, amending Section 17-3-4-336, Division 17-3-4, Article 17-3, Chapter 17, Lawton City Code 2015, by increasing member and city contributions. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

- F. Consider recommending to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to the Employee Advisory Committee, amending Section 17-2-9-215, Division 17-2-9, Article 17-2, Chapter 17, Lawton City Code 2015, by excluding Retirement and Pension amendments from Employee Advisory Committee review and correcting a numerical error.

Wilson gave background information on this item. A copy of the proposed ordinance may be obtained from the City Clerk's Office upon request.

Currently, any changes to Chapter 17 are reviewed by the Employee Advisory Committee prior to being presented to City Council for approval. This ordinance would exempt amendments from Article 17-3, Retirement and Pensions, from having to be presented to the Employee Advisory Committee. This ordinance was presented to the Employee Advisory Committee and will be presented to City Council on July 23, 2024.

Wilson said EAC members are non-union employees who are elected to represent the general employees.

Wilson said the proposed amendment today would basically say that changes to the retirement system don't have to go to the EAC prior to going to City Council. However, the Pension Trust Commission would still review proposed changes to the retirement system and make recommendations to the City Council.

Motion by Apple, Second by Ellwanger, to recommend to the City Council approval of an ordinance pertaining to Personnel Policies and Procedures, relating to the Employee Advisory Committee, amending Section 17-2-9-215, Division 17-2-9, Article 17-2, Chapter 17, Lawton City Code 2015, by excluding Retirement and Pension amendments from Employee Advisory Committee review and correcting a numerical error. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

V. Executive Session

- A. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation concerning pension calculations, and, if necessary, take appropriate action in open session.

Motion by Apple, Second by Ellwanger, to convene in executive session. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. **MOTION PASSED.**

The Commission convened in executive session at 9:38 AM and reconvened in regular, open session at 10:05 AM. Roll call reflected all members present.

Wilson read the item title as follows: **“Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation**

concerning pension calculations, and, if necessary, take appropriate action in open session.”

Wilson advised that no action will be taken on this item.

VI. Adjournment

Motion by Apple, **Second** by Ellwanger, to adjourn the July 22, 2024 meeting. **AYE:** Ellwanger, James, Apple, Petersen, Bayones. **NAY:** None. ***MOTION PASSED.***

There being no further business, Chairman Bayones adjourned the meeting at 10:07 A.M.